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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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In re DAVID S. et al., Persons Coming  
Under the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

R.S.,

Defendant and Appellant.

C058703

(Super. Ct. Nos.  
JD226869, JD226870,  
JD226871, JD226872)

R.S. (appellant), the father of David S., Luke S., Michael S., and Matthew S. (the minors), appeals from the juvenile court's orders adjudging the minors dependent children of the court and removing them from appellant's custody. (Welf. & Inst. Code, §§ 360, subd. (d), 395; further unspecified section references are to this code.) Appellant contends the juvenile court's findings and orders are not supported by substantial evidence. Disagreeing with those claims, we affirm.

## FACTS AND PROCEEDINGS

On January 22, 2008, Department of Health and Human Services (DHHS) filed original juvenile dependency petitions on behalf of the minors, who ranged in age from two years to six years. Those petitions alleged appellant physically abused Luke, who was then three years old, and that such abuse placed the other minors at a substantial risk of suffering physical harm or abuse. Those petitions also alleged the mother of the minors had failed to protect Luke, placing the other minors at a substantial risk of suffering physical harm or abuse.

The social worker's report, prepared for the combined jurisdiction and disposition hearing, contained summaries of interviews conducted with various persons, including appellant, the mother of the minors, two of the minors, grandparents of the minors, and representatives from law enforcement and medicine. As reported first in the detention hearing report, which is referred to in the combined hearing report, the minors' mother reported that Matthew had stated, "'Daddy beat up Luke'" with a metal spoon. The mother brought Luke to the hospital, which reported later that Luke had "redness to his face, redness behind his left ear and chest," and other injuries.

Appellant denied ever spanking any of the minors with any objects. He told the social worker he thought the minors were "trying to get back at him for having them clean their room all day." Although the mother denied that appellant caused any of

Luke's injuries, she admitted having fears recently about leaving the minors with appellant.

The minors' mother told authorities that appellant's usual method of physical punishment was to strike the minors over their clothes with a "metal cooking spoon that has holes in it." The mother denied that Luke had been struck on his face with a spoon, explaining that appellant would spank the minors on their bottoms with a metal spoon. However, the mother also stated she believed Luke was hit with a spoon because on one occasion Michael told her that appellant had hit the minors with a metal spoon. The mother believed that appellant's "attitude has gotten worse" recently and he scared her sometimes. Law enforcement personnel reported that hospital staff had noted Luke had "numerous bruises on his body," and that Luke told them it was appellant who had caused his injuries. Police noticed "there appeared to be a spoon shaped red mark on [Luke's] right cheek."

Appellant told authorities he had not noticed "any marks or bruises on Luke's face." He denied again ever striking the minors with a spoon. Appellant claimed that in the past the minors hit each other with utensils when they were playing. Admitting that he spanked the minors on their bottoms, appellant stated he never struck any of the minors in the face.

The paternal grandmother reported she did not notice any bruises or marks on Luke's face. She acknowledged that both appellant and the minors' mother required assistance in their parenting duties. However, the paternal grandmother believed

their relationship with each other was a good one. The maternal grandfather also denied seeing bruises or marks on Luke's face. He believed appellant and the mother were "very loving" and that the family worked together to help each other.

At the conclusion of the jurisdiction hearing, the juvenile court sustained the petitions in part, finding that Luke was "physically abused by a spoon to the face." The court also found the other minors were at a substantial risk of suffering physical abuse. The court struck allegations that Luke suffered a bite mark to his arm and another physical injury due to acts of appellant or the minors' mother.

In support of its dispositional order of removal of the minors from appellant's custody, the juvenile court stated in part as follows: "I think there is clear and convincing evidence to remove [custody] from [appellant] at least on a temporary basis because we have the sustained petitions, we do have evidence of [appellant] being aggressive, I think, [sic] actions against the [minors] lately. And until that gets resolved I'm concerned that an incident like this could repeat itself until [appellant] makes some progress in services."

## DISCUSSION

### I

#### *Jurisdictional Findings*

Appellant contends the evidence is insufficient to support the jurisdictional findings pursuant to subdivisions (b) and (j) of section 300. According to appellant, no substantial evidence

was adduced of any current and substantial risk of physical abuse or neglect of the minors. Appellant also argues no evidence was adduced that he struck Luke anywhere except on the bottom, and in any event, there was no evidence appellant hit Luke in the face with a spoon.

Our "review of the sufficiency of the evidence to support the judgment is limited to whether the judgment is supported by substantial evidence. Issues of fact and credibility are questions for the trial court and not the reviewing court. The power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact." (*In re Christina T.* (1986) 184 Cal.App.3d 630, 638-639.)

The purpose of section 300 is to protect minors from conduct or omissions by parents that place the minors at a substantial risk of suffering serious physical harm or illness. (§§ 300, subd. (b); 300.2.) In this case, the petitions alleged generally that the minors were at a substantial risk of suffering serious physical harm as a result of appellant's physical abuse of one minor and the mother's failure to protect the minors. In evaluating the evidence, the emphasis must be on circumstances existing at the time of the jurisdiction hearing. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) However, evidence of past problems may be relevant to current circumstances and thus may be considered. (Cf. *In re Michael S.* (1981) 127 Cal.App.3d 348, 357-358.)

The evidence before the juvenile court at the combined jurisdiction and disposition hearing was in the form of social worker's reports. The juvenile court indicated it had considered those reports. Medical and police records were attached to the report prepared for the combined hearing.

Subdivision (b) of section 300 provides for jurisdiction where there is a substantial risk the minor will suffer serious physical harm or illness as a result of various types of conduct or acts of omission on the part of the parent of the minor. Subdivision (j) provides for jurisdiction where a minor's sibling has been abused or neglected, and there is a substantial risk the minor will be abused or neglected.

Viewed in the light most favorable to the judgment (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899), the record in this case supports the juvenile court's jurisdictional findings under subdivisions (b) and (j) of section 300. Although the supporting facts are not numerous, they do suggest a causal connection between appellant's physical abuse of one minor, and an identified current, substantial risk of harm to that minor's siblings. Read together, the allegations contained in the petitions aver sufficiently a substantial risk of serious physical harm to the minors posed by appellant's actions and the mother's failure to protect the minors.

Relying in part on *In re David M.* (2005) 134 Cal.App.4th 822, appellant argues the record contains no substantial evidence that he caused the marks and bruising on Luke's face. We disagree. The record contains evidence in the form of a

hospital report that it was appellant who struck Luke with a spoon, and in the form of a police report that quoted Luke as saying it was appellant who caused his injuries. Finally, the mother told police that appellant had struck her and had been "very aggressive towards the [minors] lately."

In sum, we conclude that substantial evidence supports the juvenile court's exercise of jurisdiction in this case. (Cf. *In re Basilo T.* (1992) 4 Cal.App.4th 155, 169.)

## II

### *Dispositional Findings and Orders*

Appellant claims there was insufficient evidence to support the dispositional order of removal, as the dispositional findings by the juvenile court that there was a substantial danger to the health and well-being of the minors and no reasonable means to protect the minors other than removing them from parental custody are not supported by substantial evidence. According to appellant, "there was simply insufficient evidence that, as of the time of the dispositional hearing, [appellant's] children would be at substantial risk of harm in his care."

To support an order removing a child from parental custody, the juvenile court must find clear and convincing evidence "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's

. . . physical custody.” (§ 361, subd. (c)(1); see also *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) The court also must “make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor” and “state the facts on which the decision to remove the minor is based.” (§ 361, subd. (d).)

Removal findings are reviewed under the substantial evidence test, drawing all reasonable inferences to support the findings and noting that issues of credibility are matters for the trial court. (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193.) Further, evidence of past conduct may be probative of current conditions, particularly where there is reason to believe the conduct will continue in the future. (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.)

Ample evidence at the disposition hearing supports the juvenile court’s order for removal of the minors from parental custody. The court had before it evidence of appellant’s denials of any responsibility for the injury to Luke’s face, despite statements contained both in medical and police reports that attributed the injury to appellant. Moreover, the record also contains evidence that appellant had failed to cooperate with DHHS in the past. For example, appellant was absent when nurses visited to assess the household, and he had denied DHHS personnel entrance to the home on other occasions. With this evidence before it, it was reasonable for the juvenile court to find, as it did, that the family’s situation might continue to deteriorate unless appellant participated in various services.



Unfortunately, there was little in the record to suggest appellant was willing and able to ameliorate the problematic circumstances which led to the exercise of jurisdiction by the juvenile court in this case. For example, as we have said, appellant denied the allegations in the petitions pertaining to the family's difficulties. Moreover, according to the mother, she was fearful of appellant, whose aggressive behaviors she believed had escalated recently.

On this record, it is not surprising the juvenile court concluded that, to ensure their protection, the minors had to be removed from appellant's custody. Moreover, far from constituting speculative fears, the court's concerns expressed in its comments at disposition reflect the facts and circumstances presented to it. As the transcript of its comments shows, the court suggested it feared that returning the minors too soon would lead to the same difficulties already besetting the family. Moreover, the court also implied that appellant required more time during which he would have the opportunity to learn how to more effectively address his stressors and the challenges of parenting.

Appellant's reliance on *In re Paul E.* (1995) 39 Cal.App.4th 996, is misplaced. The circumstances there involved potential hazards existing primarily outside the residence, and one minor who was four years old. (*Id.* at pp. 999, 1005-1006.) Here, four children were at a substantial risk of suffering harm; one had been physically abused by appellant, and the mother reported she too had been a victim of physical abuse by appellant.

Appellant argues the juvenile court failed to consider less drastic measures than removal. But the record reflects, and the court found, DHHS had made reasonable efforts to eliminate the need for removal of the minors from parental custody. Unfortunately, those efforts had not succeeded. Until appellant establishes he can benefit from the provision of additional services, there is ample evidence the minors' safety and well-being in appellant's custody would be in serious jeopardy if they were returned to appellant's custody.

In making its determinations, by statute the juvenile court is required to both review the reports submitted and the efforts made by the parent. Moreover, DHHS has the statutory burden of establishing that return of the minor to parental custody would create a substantial risk of detriment to the minor's well-being. (§ 361, subd. (c)(1).) Of course, as we have said, it is the court's function to assess the credibility of the evidence and to make required statutory determinations, as it is axiomatic that it is within the exclusive province of the juvenile court to make such credibility determinations. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598.)

In sum, we conclude that it was well within the province of the juvenile court to conclude that returning the minors to appellant's custody would create a substantial risk of detriment to the minors, even with the provision of strict DHHS supervision. The record as it pertains to appellant's denials by itself supports that conclusion. Accordingly, the court's decision to continue the minors' placement outside of

appellant's custody was not an abuse of the court's discretion.  
(Cf. *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Substantial evidence supports the dispositional order of removal, which the record reflects was supported by factual findings made by the juvenile court.

#### DISPOSITION

The orders of the juvenile court are affirmed.

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HULL, J.

We concur:

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BLEASE, Acting P. J.

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BUTZ, J.